

STATE OF MICHIGAN  
COURT OF APPEALS

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ACTIVE INTERNET MARKETING, LLC,

Plaintiff-Appellee,

v

AUTO NET FINANCIAL SERVICES, LLC,

Defendant-Appellant.

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UNPUBLISHED

January 24, 2008

No. 270796

Leelanau Circuit Court

LC No. 06-007113-CK

Before: Beckering, P.J., and Sawyer and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court order that enforced an arbitration award in favor of plaintiff. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant entered into a written “consulting contract.” Plaintiff agreed to perform Internet-based marketing for defendant. With regard to dispute resolution, the contract included an arbitration clause. Eventually, plaintiff filed for arbitration with the American Arbitration Association alleging that defendant had failed to pay outstanding invoices in the amount of \$6,250. Defendant claimed that the work was not properly completed or documented and that plaintiff had over-billed for the services. However, instead of proceeding with the arbitration and submitting documents to the arbitrator, defendant filed a separate action in the district court. The district court dismissed the action, ruling that the claim had to be arbitrated. Meanwhile, the arbitration process continued, and the arbitrator issued an award in favor of plaintiff based on the documents submitted by plaintiff. Defendant never submitted documents to be considered by the arbitrator.

Generally, a challenge to an order to enforce, vacate, or modify an arbitration award is reviewed de novo. *Saveski v Tiseo Architects, Inc*, 261 Mich App 553, 554; 682 NW2d 542 (2004); *Tokar v Albery*, 258 Mich App 350, 352; 671 NW2d 139 (2003).

Defendant argues that this Court should vacate the arbitration decision because the arbitrator refused to hear evidence material to the controversy, the judgment was inequitable, and the arbitrator should have been required to keep a record of the proceedings. We disagree. The trial court did not err in denying defendant’s motion to dismiss or to remand for arbitration but, instead, ordering that the arbitration award be enforced.

Defendant first argues that the arbitrator's decision should be vacated because the arbitrator refused to hear evidence material to the controversy, making the arbitration a default judgment. Defendant's argument is somewhat misleading. Defendant was given several opportunities to submit evidence. Instead of submitting documents to the arbitrator, defendant chose to file an action in the district court. Therefore, a more accurate statement is that defendant refused to submit any evidence, and the arbitrator was forced to render a decision without it.

According to MCR 3.602(J)(1), a reviewing court should vacate an arbitration award if it finds the following: "(a) the award was procured by corruption, fraud, or other undue means; (b) there was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights; (c) the arbitrator exceeded his or her powers; or (d) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights." See also *Saveski, supra* at 554. Defendant alleges, but does not provide any factual support for the allegation that the arbitrator refused to hear evidence material to the controversy. The arbitrator granted defendant multiple extensions to allow it to submit evidence. However, defendant declined to submit any documents in support of its position.

All of the documents issued by the arbitrator in relation to this case indicate that this was to be a "document submission" case. AAA Rule E-6, which is applicable to this case, provides:

Where no party's claim exceeds \$10,000, exclusive of interest and arbitration costs, and other cases in which the parties agree, the dispute shall be resolved by submission of documents, unless any party requests an oral hearing, or the arbitrator determines that an oral hearing is necessary. The arbitrator shall establish a fair and equitable procedure for submission of documents.

The arbitrator explicitly stated in his decision that the ruling in plaintiff's favor was based on his "having fully reviewed and considered the written documents submitted to me by November 14, 2005." Therefore, the decision in this case was made without benefit of defendant's evidence only because defendant failed to submit it, not because the arbitrator refused to hear it.

Defendant also suggests that the arbitrator in this case violated AAA Rule 29, which provides:

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

However, as previously mentioned, the arbitrator tried to accommodate the submission of defendant's documents by granting several extensions. Defendant was provided with due notice, as evidenced by the fact that it sought those extensions of the time limits. Furthermore, defendant failed to properly obtain a postponement, but merely announced it was filing an action in district court. Thus, the arbitrator in this case properly followed AAA Rule 29.

Next, defendant argues that the arbitration award should be vacated because enforcing it would be inequitable. Defendant asserts that its due process rights were violated because it was never given the opportunity to be heard. Defendant was given the opportunity to be heard, but simply did not take advantage of the opportunity. Defendant's due process rights were not violated.

Finally, defendant argues that the arbitration decision should be vacated because arbitrators should be required to keep a record of their findings and the arbitrator did not keep a record in this case. This argument has been raised before and rejected by this Court in *Saveski*, *supra* at 556-557. In *Saveski*, the Court first discussed the case of *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118; 596 NW2d 208 (1999), which involved an employee's claim under the Civil Rights Act, MCL 37.2101 *et seq.* and required an arbitrator to record the findings of fact and conclusions of law that led to the arbitration award. But the *Saveski* Court specifically stated:

We will not extend the application of this requirement to arbitration of more commonplace contractual matters. Such a holding would unnecessarily encumber the informal and efficient arbitration procedures envisioned and fostered by our Supreme Court's holding in [*DAIIE v Gavin*, 416 Mich 407, 434; 331 NW2d 418 (1982)]. Therefore, the arbitrator was not required by law to produce specific findings of fact and legal conclusions. [261 Mich App at 557.]

Therefore, the *Saveski* case is directly on point and defendant's argument that the arbitrator should have been required to keep a record of this case must fail.

Affirmed.

/s/ Jane E. Beckering  
/s/ David H. Sawyer  
/s/ Karen M. Fort Hood